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In re Application of
Kunze et al.
Serial No.: 09/937,331
PCT No.: PCT/EP00/02138
Int. Filing Date: 10 March 2000
Priority Date: 23 March 1999
Attorney's Docket No.: 72.053
For: INTERNAL VIBRATOR WITH A
MEASURING SYSTEM

DECISION ON
PETITION
UNDER 37 CFR 1.137(b)

This decision is responsive to the "PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNTENTIONALLY UNDER 37 CFR 1.137(b)" filed 04 February 2002. Applicant included the \$1280 petition fee.

BACKGROUND

On 10 March 2000 applicants filed international application PCT/EP00/02138, which claimed priority of an earlier German application filed 23 March 1999. The thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 23 September 2002.

On 01 September 2002, applicant filed a transmittal letter for entry into the national stage into the United States. The transmittal letter was accompanied by a preliminary amendment, but did not include the basic national fee. These papers were assigned Application No. 09/937,331.

On 05 December 2001, the United States Patent and Trademark Office mailed out a "NOTIFICATION OF ABANDONMENT" indicating that the application had become abandoned for failure to pay the basic national fee by thirty months.

On 04 February 2004, applicants filed the current petition along with a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*, a declaration, the \$1280 petition to revive fee, the \$130 surcharge for filing the declaration after 30 months, the recording of assignment fee of \$40 and the basic national fee of \$890. These papers were assigned Application No. 10/049,135.

On 05 April 2002, the United States Patent and Trademark Office mailed out a "NOTICE OF CANCELLATION OF ASSIGNED SERIAL NUMBER" (form PCT/DO/EO/908) indicating that serial number 10/049,135 had been cancelled, and that the fees associated with that application had been credited to applicant's deposit account.

On 27 May 2003, 17 September 2003 and 11 March 2004, applicant filed status requests inquiring about the status of this application.

On 03 June 2004, applicant filed a copy of the papers originally filed on 04 February 2002, including the petition to revive as well as a request for refund with respect to the fees in application 10/049,135.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied (1) by a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) by a proper reply, (3) by the petition fee required by law (37 CFR 1.17(m)), and (4) if the international filing date of the application is before June 8, 1995, any petition to revive under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer and small entity fee of \$55

Applicants have provided the required statement, a proper reply and the petition fee.

With respect to the fees in the 10/049,135 application, those fees should have been moved to the 09/937,331 application. However, with respect to application number 10/049,135, on 10 April 2002, \$1190 was credited to applicant's deposit account; on 12 July 2004, the other \$1320 was credited to applicant's deposit account. In order to pay the fees for application number 09/937,331, applicant's deposit account was charged \$2340 (\$1280 for the petition to revive, \$890 for the basic national fee, \$130 for filing the declaration after thirty months from the earliest priority date and \$40 for the recording of the assignment.)

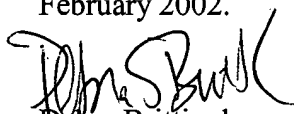
CONCLUSION

The petition to revive the application is **GRANTED**.

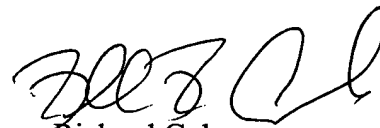
Applicant's deposit account number **50-1170** has been **credited \$1320** for application 10/149,135. Applicant's deposit account has been **charged \$2340** in order to pay the fees due in application 09/935,331.

All papers assigned to application serial number 10/149,135 have been placed in application serial number 09/935,331. Further, all future correspondence filed with respect to this application should only refer to application serial number 09/935,331.

The application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371 date of 04 February 2002.



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